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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. 304

SOUTHERN BLOWPIPE & ROOFING COMPANY
and E. J. HOPTON,
Petitioners,

v.

CHATTANOOGA GAS COMPANY,
Respondent.

REPLY BRIEF TO BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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In its statement on Jurisdiction the respondent has asserted:

> "2. The respondent asserts that the sole question represented by the petition presupposes or assumes a factual situation which the trial of the case showed to be non-existent, and that this Court is without jurisdiction to consider a hypothetical question when a ruling would not affect the rights of the litigants."

This statement is incorrect. The District Court held that the Gas Company was operating as a monopoly—was

already possessed of a legal monopoly. This question was not presented to the jury. The proof was undisputed that the Gas Company was operating in the relevant market of the plaintiffs. The question was, then, can a monopoly operate in a separate competitive relevant market without carrying over into that separate market its monopoly power.

On page 22 of the respondent's brief the question is made clear. It is pointed out that an essential element is:

> " * * * (1) the possession of monopoly power in the relevant market * * *"

The respondent then states:

> "The jury and the two lower Courts have found that there is no monopoly in this case."

The difference between "monopoly" and "monopoly power" is thus glossed over. The petitioners did not, and could not, prove that the Gas Company had both monopoly power and intent to exert this power in the petitioners' relevant market, both of which, by the charge of the District Court, were essential to establish a monopoly. *The jury did not find that "monopoly power" did not exist.*

The contention that a ruling on this question would not affect the rights of these litigants ignores the fact that had the plaintiffs' motion for a directed verdict been granted, as a correct answer to the question presented requires, the plaintiffs would have prevailed and received both injunctive relief and substantial damages.

Respectfully submitted,

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September 6, 1968.